2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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Working paper on article X (NPT withdrawal) submitted by Australia and New Zealand

Introduction

The possibility of a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) building a capacity for rapid breakout to nuclear weapons and then withdrawing from the Treaty has existed since the inception of the Treaty. The Treaty addresses this risk by strictly limiting the circumstances in which withdrawal is possible. According to article X of the Treaty, a party to the Treaty seeking to withdraw is required to have determined that "... extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country". To underline the seriousness of any proposed withdrawal, article X requires that notice of withdrawal be given not only to all other Parties, but also to the Security Council.

Agreement by the Review Conference of some common understandings on withdrawal from the Treaty would assist with ensuring a prompt and appropriate international response in any further cases. It is not proposed that the withdrawal provisions of NPT be altered in any way. The intention is to support better use of existing provisions and structures.

NPT parties should not be able to evade their commitments under the Treaty by withdrawal. International law applying in cases of treaty withdrawal should be affirmed in the context of NPT. In particular, article 70 of the Vienna Convention on the Law of Treaties provides that withdrawal from a treaty does not absolve a party from performing any obligations that accrued prior to a valid exercise of its right to withdraw.

An NPT party that withdraws from the Treaty should not be able to use nuclear items acquired for peaceful purposes while the party was subject to the non-proliferation assurance of NPT membership. NPT parties should confirm that nuclear materials, equipment and technology acquired by a State on the basis that they would be used for peaceful purposes remain subject to peaceful use obligations even if a State withdraws from the NPT. In accordance with article III of the Treaty, no party should supply nuclear items to a State that has withdrawn. Parties should also be vigilant not to supply to such a State dual-use items that could advance its nuclear programme.

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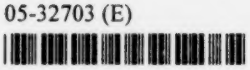

Intergovernmental agreements on transfers for the peaceful uses of nuclear energy should forbid the use of nuclear materials, equipment and technology subject to such agreements if the recipient withdraws from the NPT. This same condition should apply also to nuclear materials, equipment and technologies produced from, or with the help of, nuclear materials, equipment and technology originally transferred. Intergovernmental nuclear transfers agreements should require that, in cases of NPT withdrawal nuclear materials, equipment and technology would be returned to the supplier State, rendered inoperable or dismantled under international verification.

Withdrawal from the Treaty cannot be an avenue for NPT parties to avoid international accountability for violations committed while a party to the Treaty. In view of the seriousness of any NPT withdrawal and the potential threat to international peace and security, it would be appropriate for the Security Council to convene automatically and immediately when any State gives notice of NPT withdrawal. There would also be merit in convening an extraordinary meeting between the States parties to the Treaty to consider any case of withdrawal.

Such a meeting of the Security Council could, inter alia, set out the conditions that would apply in the event that a notified withdrawal proceeds. Swift and decisive action by the Security Council in the case of NPT withdrawals has been identified by the Director General of the International Atomic Energy Agency (IAEA) as an essential step to strengthen the NPT.

The importance of this issue was recognized by the United Nations High-level Panel on Threats, Challenge and Change, appointed by the Secretary-General, which concluded in its December 2004 report that NPT parties that withdraw "... should be held responsible for violations committed while still a party to the Treaty". The High-level Panel recommended that a State's notice of withdrawal "... should prompt immediate verification of its compliance with the Treaty, if necessary mandated by the Security Council" (A/59/565, para. 34).

Proposed language of the Final Document

The Conference stresses that NPT withdrawal is not a means for States that violate their Treaty obligations to avoid being held accountable for such breaches, in accordance with the responsibilities of the Security Council and, where appropriate, the Board of Governors of IAEA. The Conference considers that any notice of withdrawal should prompt immediate verification of the State's compliance with the Treaty, if necessary mandated by the Security Council.

The Conference considers any notice of withdrawal from the Treaty to be potentially an issue of fundamental importance to international peace and security, warranting immediate, automatic consideration by the Security Council and appropriate action by the Security Council. Provision might also be made to convene an extraordinary meeting of NPT States parties. Consistent with the international legal principles applying to treaties, the Conference affirms that withdrawal from the Treaty does not absolve a State party from meeting obligations it had not met at the time of withdrawal. The Conference stresses that nuclear materials, equipment and technology acquired by a State on the basis that they would be used for peaceful purposes remain subject to peaceful use obligations even if a State withdraws from the Treaty.

The Conference urges nuclear suppliers to include in intergovernmental agreements on transfers for the peaceful uses of nuclear energy a clause forbidding the use of nuclear materials, equipment and technology subject to such agreements, if the recipient withdraws from NPT.

This same condition should apply to nuclear materials, equipment and technologies produced from, or with the help of, nuclear materials, equipment and technology originally transferred. Such intergovernmental agreements should require that in cases of NPT withdrawal nuclear materials, equipment and technology be returned to the supplier State, rendered inoperable or dismantled under international verification. The Conference underlines that, in accordance with article III of the Treaty, no party should supply nuclear items to a State that has withdrawn. Parties should also be vigilant not to supply to such a State dual-use items that could advance its nuclear programme.